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SENATE

REPORT
99-536

PROVIDING FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED TO THE COW CREEK BAND OF UMPQUA INDIANS IN UNITED STATES CLAIMS COURT DOCKET NUMBERED 53-81L, AND FOR OTHER PURPOSES

OCTOBER 8 (legislative day, OCTOBER 6), 1986.—Ordered to be printed

Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 3214]

The Select Committee on Indian Affairs to which was referred the bill (H.R. 3214) to provide for the use and distribution of funds awarded to the Cow Creek Band of Umpqua Indians in United States Claims Court docket numbered 53-81L, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of H.R. 3214 is to provide a plan for the distribution and use of judgment funds awarded to the Cow Creek Band of Umpqua Indians in the United States Claims Court docket numbered 53-81L, and for other purposes.

BACKGROUND

The Cow Creek Band of Umpqua were, aboriginally, a small group of Indians residing along Cow Creek, a tributary of the Umpqua River, in what is now Douglas County in southwestern Oregon. Although the Band's population was estimated at about 220 in 1851, the discovery of gold brought an influx of settlers and the advent of hostilities between Indians and non-Indians that left the tribe's population decimated. The Band signed a treaty in 1853, ceding their lands in consideration for certain goods, other land, services and annuities.

A 1980 Act of Congress, Public Law 96-251, conferred jurisdiction on the U.S. Court of Claims to consider claims filed by the Cow Creek Band of Umpqua Indians. On June 12, 1984, the Claims

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Court granted an award of $1,500,000 in Docket Number 53-81L to the Band, and funds to satisfy the award were appropriated on August 21, 1985. Based on land and reservation loss, the case was settled by compromise. The tribe sought the following relief in the Claims Court: (1) Money damages arising from the United States' taking of tribal aboriginal lands without compensation—lands which were both within and outside of the Treaty cession area; (2) compensation for the taking of minerals from the Tribe's aboriginal lands; (3) compensation for a reservation promised by the Treaty, but never established for the exclusive use of the Tribe; and (4) such compensation as the Court deems appropriate for the Fifth Amendment violations committed by the United States in conjunction with the referenced takings. All the claims were settled in the granting of the award.

While the Cow Creek Band of Umpqua Tribe of Indians were the plaintiffs in Docket Number 53-81L, it is one of two organized groups in Oregon with members who assert lineal descendancy from the aggrieve Cow Creek Band of Umpqua. In addition to these two groups, there is an undetermined number of lineal descendants of the Cow Creek Band who signed the treaty of September 19, 1853, that are unaffiliated with any tribe.

The 1980 Act of Congress defined the group of persons eligible to bring the action in the Claims Court. The Act defines the term, "Cow Creek Band of Umpqua Tribe of Indians" to mean the "group of persons descended from persons considered members of such band for purposes of the treaty entered into between such band and the United States on September 19, 1853 (10 Stat. 1027), as ratified by the Senate on April 12, 1854, except that such group shall not include any person, or the descendent of any person, who shared in the distribution of funds under the Act entitled 'An Act to provide for the termination of Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individual members thereof, and for other purposes', approved August 13, 1954 (25 U.S.C. 564, et seq.), or under the Act entitled 'An Act to provide for the termination of Federal supervision over the property of certain tribes and bands of Indians located in western Oregon and the individual members thereof, and for other purposes', approved August 13, 1954 (25 U.S.C. 691 et seq.)." The amendment in the nature of a substitute to H.R. 3214 proposed by the Senate Select Committee on Indian Affairs parallels the definition contained in the 1980 Act for purposes of defining: (1) those members of the Cow Creek Band eligible to participate in the program benefits that are authorized in H.R. 3214; and (2) those nontribal members, who upon certification of Cow Creek descendancy as defined in the 1980 Act, become eligible for participation in the program benefits that are authorized in H.R. 3214.

On December 29, 1982, Public Law 97-391 provided for Federal recognition of the Cow Creek Bank of Umpqua Indians, and also provided authority for the institution of Federal services to the tribe that are provided to Indians who are recognized by the Federal government and who receive such services as a function of the Federal government's trust responsibility for Indian people, their lands and resources. For purposes of assuring that the definitions contained in the 1982 Act are consistent with the terms employed

in the 1980 Act, the Committee's proposed amendment to H.R. 3214 amends the definition of "tribe" and "tribal membership" in the 1982 Act, and provides for technical amendments to conform with the amended definitions.

In extending Federal recognition to the Cow Creek Band of Umpqua Indians, the 1982 Act also provided that membership in the tribe was not to entitle an individual, who was not otherwise entitled, to participate in any distribution of funds pursuant to a judgment under the 1982 Act. The Committee's amendment in the nature of a substitute to H.R. 3214 extends the limitations on judgment fund participation that were contained in the 1982 Act.

Because of the existence of Cow Creek lineal descendants that are not members of the tribe, the tribe has agreed to allow those descendants to participate in judgment fund programs provided documentation of Cow Creek lineal descendency is submitted to the tribe and such descendency is certified by the Secretary of the Interior.

LEGISLATIVE HISTORY

H.R. 3214 was introduced in the House of Representatives on August 1, 1985 by Congressman James Weaver, and referred to the Committee on Interior and Insular Affairs. The House Interior and Insular Affairs Committee held a hearing on H.R. 3214 on December 10, 1985. The Committee ordered H.R. 3214 reported on March 19, 1986, and the Committee's report on the bill was filed on May 5, 1986. On May 6, 1986, the House of Representatives passed H.R. 3214, under suspension of the House rules. H.R. 3214 was received in the Senate on May 8, 1986, and was referred to the Select Committee on Indian Affairs. The Committee held a hearing on H.R. 3214 on August 6, 1986, and ordered the bill reported with an amendment in the nature of a substitute to H.R. 3214 on October 6, 1986.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Select Committee on Indian Affairs, by poll of the members showing a unanimous vote, recommends that the Senate pass H.R. 3214, as amended.

COMMITTEE AMENDMENTS

The Committee recommends an amendment in the nature of a substitute.

SECTION-BY-SECTION ANALYSIS OF H.R. 3214

Section 2 sets forth the definitions of the terms "Secretary", "Assistant Secretary", "Tribe", "Tribal member", "tribe's governing body", "Tribal Council", "Tribal elder", and "Office of Hearings and Appeals" for purposes of this Act.

Section 2(1) provides that the term "Secretary" shall mean the Secretary of the Interior for purposes of this Act.

Section 2(2) provides that the term "Assistant Secretary" shall mean the Assistant Secretary for Indian Affairs within the U.S. Department of the Interior.

Section 2(3) provides that the term "Tribe" shall mean the Cow Creek Band of Umpqua Tribe of Indians that was extended Federal recognition by Public Law 97-391.

Section 2(4)(A) provides that except for purposes of section 7 of this Act the term "Tribal member" shall mean any individual who is a member of the Cow Creek Band of Umpqua Tribe of Indians within the meaning of section 5 of Public Law 97-391 as amended by section 5 of this Act, and who has been certified by the Secretary under the provisions of section 7 of this Act.

Section 2(4)(B) provides that notwithstanding subparagraph (A), for purposes of subsections (b), (c), and (d) of section 4, the term "Tribal member does not include any individual who shared in the distribution of funds under the Act of August 13, 1954 (68 Stat. 718) or the Act of August 13, 1954 (68 Stat. 724).

Section 2(5) provides that the term "tribe's governing body" shall mean the governing body as determined by the tribe's governing documents.

Section 2(6) provides that the term "Tribal Council" shall mean the general membership of the Cow Creek Band of Umpqua Tribe of Indians convened in a meeting open to all Tribal members.

Section 2(7) provides that the term "Tribal elder" shall mean any tribal member who reaches 50 years of age on or before December 31, 1985.

Section 2(8) provides that the term "Office of Hearings and Appeals" shall mean the Office of Hearing and Appeals of the U.S. Department of the Interior or any successor of such Office.

Section 3 provides that notwithstanding the provisions of Public Law 93-134 (25 U.S.C. 1401, et seq.), or any plan prepared or promulgated by the Secretary pursuant to that Act, the judgment funds awarded in U.S. Claims Court Docket Number 53-81L are to be distributed and used in the manner provided in this Act.

Section 4(a) provides that the total judgment fund of $1,500,000, and any interest and income earned on the fund prior to the date of enactment of this Act, minus attorney's fees and money expended to repay a loan from the Bureau of Indian Affairs for expert witness testimony during the Court of Claims case, is to be set aside as the principal, to be maintained by the Secretary in trust for the Tribe. Section 4(a) further provides that only interest earned on the principal is to be used to fund programs authorized by this Act. Section 4(a) provides that there is to be no per capita distribution of any amounts from the fund, other than as specified in this Act.

Section 4(b)(1) provides that from the fund's principal, the amount of $500,000 will be earmarked for the Elderly Assistance program, and interest on that amount will be used to fund the Elderly Assistance program. Section 4(b)(1) provides that a one-time-only payment of $5,000 will be made to each Tribal elder as soon after January 1, 1986 as the conditions outlined in subparagraphs (A) and (B) have been met.

Section 4(b)(1)(A) provides that a mechanism must exist whereby the Tribe can request the release of funds from the Secretary in order to begin payments before any payments can be made to Tribal Elders.

Section 4(b)(1)(B) provides that a list of all tribal members who are 50 years of age on or before December 31, 1985 must be compiled and reviewed for accuracy by the tribe's governing body and a financial distribution system must be established before any payments can be made to Tribal elders.

Section 4(b)(2) provides that payments to tribal elders is to be in accordance with the formula set forth in subparagraphs (A), (B) and (C).

Section 4(b)(2)(A) provides that until the interest accumulated for one year on the principal amount of $500,000 has been depleted below the sum of $5,000, payments of $5,000 will be made to tribal elders by age in the descending order of their respective ages beginning with the oldest tribal elder. Subparagraph (A) also provides that any remaining interest is to be carried over to the following year for distribution pursuant to subparagraph (A) in the next $5,000 payment.

Section 4(b)(2)(B) provides that in succeeding years, payments of $5,000 will continue to be made to tribal elders in descending order of their respective ages on or before January 1 of each year, until the interest earned on the principal amount of $500,000 has been depleted below the sum of $5,000 in each year. As provided in subparagraph (A), any remaining interest is to be carried over to the following year for distribution pursuant to subparagraph (B) in the next $5,000 payment.

Section 4(b)(2)(C) provides that the process of distributing one-time only payments to tribal elders is to continue each year until every individual that is eligible for payment has received a one-time only payment of $5,000. Subparagraph (C) further provides that when all payments have been completed, the principal sum of $500,000 and any remaining interest is to be distributed to other tribal programs as provided in this Act.

Section 4(b)(3) provides that if a tribal member that is eligible for an elderly assistance payment dies before receiving the payment, the amount which was to have been paid to that individual is to be returned to the Elderly Assistance Program fund for distribution in accordance with subparagraphs (A), (B) and (C).

Subsection 4(b)(4) provides that any individual that is eligible for the Elderly Assistance program, may appeal to the Secretary if that individual feels that he or she has been unfairly denied the right to participate in the Elderly Assistance program.

Section 4(c)(1) provides that from the fund's principal, the amount of $100,000 will be earmarked for the Higher Education and Vocational Training program, and interest on that amount will be used to fund the Higher Education and Vocational Training program. Section 4(c)(1) provides that the interest earned on the $100,000 amount of principal is to be used to provide scholarships to tribal members pursuing college, university, or professional education or training. Section 4(c)(1) provides that although tribal members seeking vocational training may also receive funding under the Higher Education and Vocational Training program, such tribal members must first seek funding from the Adult Vocational Training program funding that is available through a Bureau of Indian Affairs contract if the tribal member is eligible

for the BIA funding and there are sufficient funds available from the BIA source.

Section 4(c)(2) provides that upon completion of the Elderly Assistance program, the amount of the principal earmarked for the Higher Education and Vocational Training program shall be increased to $250,000.

Section 4(d)(1) provides that from the fund's principal, the amount of $100,000 will be earmarked for the Housing Assistance program, and interest earned on that amount will be used to fund the Housing Assistance program. Section 4(d)(1) provides that Housing Assistance program funds may be added to any existing tribal Housing Improvement Programs to supplement such programs or in the alternative, may be used in a separate housing assistance program to be established by the tribe's governing body. Section 4(d)(1) further provides that the purposes for which the housing assistance program funds may be used are: (A) for the rehabilitation of existing homes; (B) for emergency repairs to existing homes; (C) for down payments on new or previously occupied homes; or (D) for the purchase or construction of new homes.

Section 4(d)(2) provides that upon completion of the Elderly Assistance program, the amount of the principal earmarked for the Housing Assistance program shall be increased to $250,000.

Section 4(e)(1) provides that from the fund's principal, the amount of $250,000 will be earmarked for Economic Development, and interest earned on that amount will be used to fund the Economic Development program. Section 4(e)(1) further provides that if other funding is not available or adequate, interest earned on principal funds earmarked for Economic Develpment may be used for the construction and maintenance of a tribal center. Section 4(e)(1) provides that economic development funds may be used for the purposes of:

(A) land acquisition for business or other activities which would benefit the tribe economically or provide employment for tribal members. Section 4(e)(1) provides that at least 50 percent of all individuals employed in a tribally operated business acquired or operated under the authority of section 4(e)(1) are to be tribal members or the spouses of tribal members as available and qualified. Section 4(e)(1) also provides that as new positions open or existing ones are vacated, preference for employment will be given to tribal members or their spouses. Section 4(e)(1) further provides that non-tribal members may be considered for employment if there are insufficient numbers of qualified tribal members or their spouses are available to fill at least 50 percent of the positions offered.

(B) business development for the tribe, inciuding collateralization of loans for the purchase or operation of businesses, matching funds for economic development grants, joint venture partnerships, and other similar ventures which could be expected to produce profits for the tribe or to employ tribal members.

(C) reservation activities, including forest management, wildlife management and enhancement of wildlife habitats, stream enhancement, and development of recreational areas. Section 4(e)(1) provides that the tribe's governing body is to determine

which reservation activities are to be funded from economic development funds under subparagraph (C).

(D) construction, support, or maintenance of a tribal center.

Section 4(e)(2) provides that upon completion of the Elderly Assistance program, the amount of the principal earmarked for Economic Development shall be increased to $400,000.

Section 4(f)(1) provides that from the fund's principal, the amount of $50,000 will be earmarked for miscellaneous tribal activities, and the interest earned on that amount will be used to fund miscellaneous tribal activities as determined by the tribe's governing body.

Section 4(f)(A) provides that fund from the tribe's miscellaneous tribal activities fund may be used to finance the operating costs of the tribe's governing body, including travel, telephone, and other expenses incurred in the conduct of the tribe's affairs.

Section 4(f)(1)(B) provides that fund from the tribe's miscellaneous tribal activities fund may be used to finance legal fees incurred in the conduct of tribal affairs, tribal businesses or other tribal activities recommended by the tribe's governing body and approved by the tribal council.

Section 4(f)(2) provides that interest earned on the $50,000 amount may be used to repay to the Secretary any funds provided by the Secretary under Bureau of Indian Affairs Contract Number P00C14207638 as determined by the tribe's governing body.

Section 4(f)(3) provides that upon completion of the Elderly Assistance program, the amount of the principal earmarked for the tribal miscellaneous activities fund shall be increased to $100,000.

Section 4(g)(1) provides that from the fund's principal, the amount of $315,000 will be earmarked as collateral on the property known as Evergreen, and interest earned on that amount will be used for payments on the loan property. Section 4(g)(1) provides that if the tribe's governing body determines that the interest and income from the property are sufficient to pay off the loan more quickly, the tribe's governing body may commit the full interest from the $315,000 principal amount to repayment of the loan until such time as loan payments are completed or the income from the property is sufficient to complete the loan payments.

Section 4(g)(2) provides that upon repayment of the loan, the principal amount of $315,000 shall be redistributed to the Housing Assistance program, the Higher Education and Vocational Training program, and the Economic Development program in such proportions as the tribe's governing body determines to be appropriate.

Section 4(h) imposes conditions on the management and use of judgment funds.

Section 4(h)(1) provides that the principal will not be used, and that only the interest earned on the principal is to be used to finance tribal programs.

Section 4(h)(2) provides that the judgment fund is to be maintained by the Secretary in interest-bearing accounts in trust for the tribe.

Section 4(h)(3) provides that except as provided in subparagraph (5), no amount greater than 10 percent of the interest earned on

the principal may be used for the administrative costs of any of the programs.

Section 4(h)(4) provides that no service area is implied or imposed under any program under this Act. Section 4(h)(4) provides that if the costs of administering any program under this Act for the benefit of a tribal member living outside the tribe's Indian Health Service service area are greater than 10 percent of the interest earned on the principal amount designated for any particular program, the tribe's governing body may authorize the expenditure of such funds for that program, but in carrying out the program, the tribe's governing body shall give priority of individuals within the tribe's Indian Health Service service area.

Section 4(h)(5) provides that at any time following the enactment of this Act, the tribe's governing body may declare a dividend to tribal members from the profits of any business enterprise of the tribe. Prior to the declaration or distribution of such dividends however, section 4(h)(5) requires the tribe's governing body to first take into consideration the effect of such a declaration or distribution of dividends on future operating costs and proposed business expansions. Section 4(h)(5) provides that profits from business enterprises may also be distributed back into any of the programs established under section 4 provided that future operating costs and proposed expansion costs are first set aside. Section 4(h)(5) further provides that any distribution back into section 4 programs are to be proportional to the percentage of principal allocated to any particular program.

Section 4(h)(6) provides that notwithstanding any other provision of this Act, no payments are to be made under any tribal program described in section 4(c) or section 4(d) before January 1, 1988, but that payments may be made before January 1, 1988 under the tribal program authorized in section 4(b) only to those tribal elders who have attained 70 years of age and who have been certified by the Secretary as meeting the requirements of paragraph (1), (2), (3), or (4)A of section 5(a) of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712c(a)).

Section 4(i)(1) provides that any portion of the principal set aside under section 4(a) which remains after the allocations of the principal required under section 4 (b), (c), (d), (e), and (f) have been made, is to be allocated among the Housing Assistance program, the Higher Education and Vocational Training program, and the Economic Development and tribal center program established under section 4 in such proportions as the tribe's governing body determines to be appropriate.

Section 4(i)(2) provides that after amounts sufficient to pay attorney's fees and the loan described in section 4(a) have been deducted, if the total amount of the principal set aside under section 4(a) is insufficient to make all of the allocations of the principal required under section 4 (b), (c), (d), (e), and (f), the portion of the principal that is required to be allocated to the purposes provided in section 4, (c), (d), (e), and (f) is to be reduced in such proportions as the tribe's governing body determines to be appropriate.

Section 5(a) provides for the amendment of section 5 of Public Law 97-391, the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712c). The amendment to section 5(a) of

Public Law 97-391 provides that the membership of the Cow Creek Band of Umpqua Tribe of Indians is to consist of every individual who is listed in the response of the tribe to the United States Interrogatory number 14 in the United States Claims Court docket numbered 53-81L and continuously maintains membership in the tribe after the date of enactment of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1986 and who is of Indian ancestry and such individuals' descendants; or every individual who is a descendant of any individual considered to be a member of the Cow Creek Band of Umpqua Tribe of Indians for purposes of the treaty entered into between such Band and the United States on September 19, 1853 (10 Stat. 1027), as ratified by the Senate on April 12, 1854, and who is a member of the tribe on the date of enactment of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1986 and such individuals' descendants; and every individual who is a descendant of any individual considered to be a member of the Cow Creek Band of Umpqua Tribe of Indians for purposes of the treaty entered into between such Band and the United States on September 19, 1853 (10 Stat. 1027) as ratified by the Senate on April 12, 1854, and who meets such other requirements as may be provided in the constitution, bylaws, or membership ordinances of the tribe and such individuals' descendants.

Section 5(a) also amends section 5(b) of Public Law 97-391 to provide that any individual may appeal to the Secretary any determination of the tribe regarding the issue of whether such individual meets the requirements of section 5(a)(4)(A) of Public Law 97-391 as amended.

Section 5(a) adds a new section 5(c) to Public Law 97-391 to provide that membership in the tribe pursuant to section 5(a) of Public Law 97-391 as amended is not to entitle an individual who shared in the distribution of funds under the Act of August 13, 1954 (68 Stat. 718, 25 U.S.C. 564 et seq.) or the Act of August 13, 1954 (68 Stat. 724, 25 U.S.C. 691 et seq.) to participate in any distribution of funds pursuant to a judgment under the Act approved May 26, 1980 (94 Stat. 372).

Section 5(a) adds a new section 5(d) to Public 97-391 to provide that Public Law 97-391 is amended by striking out "Umpqua Tribe of Oregon" each place it appears and insert in lieu thereof "Umpqua Tribe of Indians".

Section 6(a) provides that notwithstanding any other provision of this Act, any individual who is not a tribal member is to be eligible to participate in the programs established under section 4 (b), (c), and (d) of this Act if such individual submits to the tribe an application for participation in such programs which is accompanied by evidence establishing that such individual is within the group of persons described in section 4(a) of Public Law 96-251 by no later than the date that is 180 days after the date of enactment of this Act, and who is certified by the Secretary as being within the group of persons described in section 4(a) of Public Law 96-251.

Section 6(b) provides that in making certifications that an individual is within the group of persons described in section 4(a) of Public Law 96-251, the Secretary may use records collected pursuant to Bureau of Indian Affairs Contract No. P00C14207638 that

are made available to the Secretary by the tribe and other documents records, or other evidence that the Secretary determines to be satisfactory.

Section 7(a) provides that the Assistant Secretary is to make a determination with respect to each individual who is an enrolled member of the tribe of whether each individual meets the requirements of section 5(a) (1), (2), (3), or (4)(A) of Public Law 97-391, as amended. Section 7(a) provides that the Secretary is to certify for purposes of this Act each of such individuals who meet the requirements of section 5(a) (1), (2), (3), or (4)(A) of Public Law 97-391, as amended.

Section 7(b) provides that in making determinations under section 7(a), the Assistant Secretary may use records collected pursuant to Bureau of Indian Affairs Contract No. P00C14207638 that are made available to the Secretary by the tribe and any other documents, records, or other evidence that the Assistant Secretary determines to be satisfactory.

Section 7(c)(1) provides that any determination made by the Assistant Secretary under section 7(a) with respect to any individual may be appealed by such individual to the Office of Hearings and Appeals.

Section 7(c)(2) provides that any determination made by the Assistant Secretary that is appealed to the Office of Hearings and Appeals under section 7(c)(1) is to be subject to de novo review by the Office of Hearings and Appeals and the determination of the Office of Hearings and Appeals is to be final, unless the determination of the Office of Hearings and Appeals is appealed to the Secretary.

Section 7(d)(1) provides that the Assistant Secretary is to make determinations and the Secretary is to, if appropriate, make certifications, under section 7 with respect to each individual who has reached 70 years of age before the date of enactment of this Act and is an enrolled member of the tribe on the day before the date of enactment of this Act by no later than the date that is 180 days after the date of enactment of this Act.

Section 7(d)(2) provides that the Assistant Secretary is to make determinations and the Secretary is to, if appropriate, make certifications, under section 7 with respect to each individual who has not reached 70 years of age before the date of enactment of this Act, and is an enrolled members of the tribe on the day before the date of enactment of this Act, by no later than December 31, 1987.

The title of this Act is amended to read "An Act to provide for the use and distribution of funds awarded to the Cow Creek Band of Umpqua Tribe of Indians in United States Claims Court docket number 53-81L, and for other purposes."

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for H.R. 3214, as amended, as evaluated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 7, 1986.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3214, the Cow Creek Band of Umpqua Indians Distribution of Judgment Funds Act of 1986, as amended and ordered reported by the Senate Select Committee on Indian Affairs, October 6, 1986. We estimate that enactment of this bill would result in receipts to the federal government of $20,000-$30,000 annually beginning in 1989.

H.R. 3214 provides for the distribution of $1.5 million that was previously appropriated and recorded as an outlay on the federal budget. Of this amount, $315,000 would be invested and the interest income would be used to repay a loan made to the Band by the Bureau of Indian Affairs (BIA). Repayments are scheduled to begin in January, 1989, and continue through January, 2010. BIA expects that, without the funds provided by this bill, the Band would be unable to meet the payments and would default on the loan. With the funds, CBO estimates that the Band would be able to make annual payments to BIA of $20,000–$30,000.

Enactment of this bill would result in no additional costs to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that H.R. 3214, as amended, will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

Testimony was received from the Department of the Interior on H.R. 3214. The Department's statement is set forth below:

STATEMENT OF HAZEL ELBERT, DEPUTY TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS (TRIBAL SERVICES), DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE, ON H.R. 3214, A BILL "TO PROVIDE FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED TO THE COW CREEK BAND OF UMPQUA INDIANS IN UNITED STATES CLAIMS COURT DOCKET NUMBERED 53-81L, AND FOR OTHER PURPOSES."

AUGUST 6, 1986.

Mr. Chairman and Member of the Committee, I am pleased to present the views of the Department of the Interior on H.R. 3214, a bill "To provide for the use and distribution of funds awarded to the Cow Creek Band of Umpqua Indians in United States Claims Court Docket Numbered 53-81L, and for other purposes."

We oppose H.R. 3214 as passed by the House of Representatives and offer two alternatives for your consideration.

The judgment funds involved were appropriated on August 21, 1984 and a "Result of Research Report" was prepared by the Bureau of Indian Affairs to determine the beneficiaries of the funds. This research, using various archival and published sources, also examined relevant documents and testimony that had been accumulated during the Claims Court proceedings.

On the basis of the Results of Research Report, a Secretarial proposal was formulated taking into consideration the relevant provisions in Public Law 96-251 (the Cow Creek Claims Act of May 26, 1980) and Public Law 97-391 (the Cow Creek Recognition Act of December 29, 1982). Under those Acts it is clear that only the descendants of the 1853 Cow Creek Band were to be beneficiaries of the award. The Secretarial proposal recommended a per capita distribution in which the tribe's share would be proportionate to the number of its members who are able to document 1853 Cow Creek Band ancestry. The tribal plan, which is in H.R. 3214, ignores existing law by programming all of the funds for the exclusive use of the tribe. Section 5 of Public Law 97-391 closed the Cow Creek rolls and many were excluded who were eligible to be members. Although Section 6 of H.R. 3214 allows for Cow Creek descendants who are not tribal members to participate in some of the programs, we do not think this is adequate compensation for the legitimate descendants of the original Cow Creek Band.

A Hearing of Record was held on the Secretarial and tribal proposals in Eugene, Oregon on August 8, 1985. Some 230 oral or written statements were received concerning one or both plans. More than 67 percent of the responses were in favor of the Secretarial proposal or some form of per capita distribution. Included among these responses are those from several former board members of

the Cow Creek Tribe, some of who were closely involved from the inception of the recognition and claims legislation.

We received a letter from several members of Congress requesting a cancellation of the Hearing of Record and that a Secretarial Plan not be submitted to Congress. The letter was dated August 1, 1985 but was not received until two days before the Hearing of Record which was scheduled for August 8, 1985. Although this was too late to stop the Hearing, we did not submit a plan to Congress. H.R. 3214 was introduced on August 1, 1985.

H.R. 3214 provides for the distribution of funds appropriated to pay a judgment awarded to the Cow Creeks in Docket 53-81L. The bill would authorize the Secretary of the Interior to maintain these funds in trust for the tribe with fixed amounts being set aside for various programs. The interest earned on the funds could be used only for specified purposes. Any changes in use the tribe might want would require further legislation. The Secretary would have no authority or responsibility for the use of the funds. After enactment of this Act, the tribe could set its own membership requirements and Cow Creek descendants who are not tribal members would be eligible for the scholarship and housing assistance programs proposed under the bill.

Previously, Congress has clearly intended that only the lineal descendants of the Cow Creek Band represented in the 1853 treaty signing should benefit from the claims award. Section 4(a) of Public Law 96-251 states "the term Cow Creek Band of the Umpqua Tribe of Indians means the group of persons descended from persons considered members of such band for purposes of the treaty entered into between such band and the United States on September 1853 * * *", and section 5(b) of Public Law 97-391 states that "Membership in the tribe pursuant to subsection (a) shall not entitle an individual, who is not otherwise entitled, to participate in any distribution of funds pursuant to a judgment under [Public Law 96-251] the Act approved May 26, 1980 (94 Stat. 372)." Section 4 of H.R. 3214 provides for the total judgment fund to be held in trust for the tribe and the interest to be used for tribal programs. The tribe as currently constituted is not a descendant entity and includes members who are not descendants of the Cow Creek Band as it was constituted in 1853. We believe that this inconsistency may create legal and equitable problems regarding who is eligible to receive money from the judgment award.

When Congress recognized the Cow Creek Band in 1982, that law specified that the Band's members would be those enrolled on the date of enactment. Since two rolls existed, neither of which was explicitly described in the legislative history of the bill, disputes have arisen. H.R. 3214 attempts to solve this problem identifying one roll, allowing addition names to be added and including the descendants

of the people named. Although this clarifies the current membership, after this bill is enacted, the tribe could adopt any membership requirements thereby substantially expanding the Federal service population.

As the Committee knows, the Cow Creek Band of Umpqua Tribe of Indians has objected strongly to sharing this award with any who are not members of that Tribe. While we commend the Tribe on its willingness to program all of these funds, we oppose H.R. 3214 because:

(1) It ignores previous Acts of Congress as to who are the beneficiaries of the award;

(2) It excludes or limits benefits to some who should be beneficiaries;

(3) It disregards Secretarial review and approval; and

(4) It locks funds into specific categories that would require additional legislation to change.

In general, we support the concept of judgment funds being used for tribal programs. However, in this instance that approach is not fair since it provides compensation for individuals who are not descendants of the Cow Creek Band of 1853 and excludes individuals who are. Previous legislation was passed to remedy a wrong but if H.R. 3214 is enacted, that wrong will not have been remedied.

We note, however, that under *Delaware Tribal Business Committee* v. *Weeks,* 430 U.S. 73 (1977), it is clear that the judgment funds at issue in this bill are tribal property in which individuals, as such, do not have an interest. The manner in which Congress decides to program a judgment award will generally not be disturbed by the courts provided that the legislative judgment can be tried rationally to the fulfillment of the unique Federal obligation to Indians. Although it may be that the *Weeks* decision indicates that the Congress may distribute these funds to the present day tribe despite the fairness issue, we recommend that the bill be amended either (1) to simply authorize the Secretary to prepare a roll of Cow Creek descendants and distribute these funds per capita, or (2) as proposed in the Secretarial plan which I mentioned before, to authorize a per capita distribution with the shares of the members of the Tribe to be paid to the Tribe for programming purposes. We believe that given the history of this group, these are the only equitable distribution plans for this award.

This concludes my prepared statement. I would be happy to answer any questions the Committee may have.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, it is the opinion of the Committee that it is necessary to dispense with the requirements of this subsection to expedite the business of the Senate.

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